Claims 1-9 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

The term “slowly” is relative and subjective and therefore unclear.

The term "average particle diameter” is unclear where unqualified as to the statistical type of distribution intended in that the various type of distributions vary. Note in this regard that Trabert (US 4581408) at column 5, lines 3-5 distinguishes between weight and number average particle sizes.

The “styrenic copolymer” of claims 8 and 9 lacks antecedent basis in the claims from which they depend.

It is not clear what materials the term “at once” refers to in claim 1 since this is not stated. The examiner suggests “all at once” if all of the materials of step “c” are intended.

It is not clear why “method” is pluralized in claim 7 since claim 1 from which this claim depends only recited one method.

Claims 8 and 9 are unclear since the rubber reinforced thermoplastic of “a” in claim 8 already contains styrenic copolymer as the thermoplastic.

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

> A person shall be entitled to a patent unless –
>
> (b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

Claims 7-9 are rejected under 35 U.S.C. 102(b) as anticipated by or, in the alternative, under 35 U.S.C. 103(a) as obvious over Eichenauer et al. (US 2003/0092836).

Eichenauer discloses a process in Example 8 of Table1 in which polybutadiene latexes of 0.305 and 0.137 microns and gel contents of 55% and 88% respectively are grafted with a mixture of styrene and acrylonitrile in a ratio of about 1.5/1 such as encompassed my the amounts recited by the instant claims. Note also that a mercaptan chain transfer agent is use (encompassing applicants molecular weight control agent). While a second and third stage is not recited there is noting in the claims requiring a different ratio of styrene and acrylonitrile in applicants stage “a” and stage “b” and hence a product with a single shell is encompassed by Eichenauers’ and applicants’ process. With regard to applicants step “c” Eichenauer uses continuous addition of initiator and hence initiator is present late in the grafting process in both applicants and Eichenauers’ processes and applicants and Eichenauers’ processes would therefore reasonably appear to have the same conversion but in any case Eichenauer removes unreacted monomer, a step that would have the same effect. Although there are some differences in reaction temperatures and times, applicants claims 7-9 are drawn to a product not a process.

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Product-by-process claims are not rejected using the approach set out in Graham v. Deere. It is applicant's burden to show that there is a non-obvious difference between the product of a product-by-process claim and a prior art product which reasonably appears to be the same or only slightly different whether or not the prior art product is produced in the same manner as the claimed product. Note In re Marosi, 218 USPQ 289, 292-293 (CAFC 1983); In re Brown, 173 USPQ 685 (CCPA 1972) and In re Thorpe, 227 USPQ 964 (CAFC 1985) in this regard.

Any inquiry concerning this communication should be directed to Jeffrey C. Mullis at telephone number 571 272 1075.

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JCM

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